



Los Angeles County Board of Supervisors

November 18, 2008

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Interim Director

Robert G. Splawn, M.D.
Interim Chief Medical Officer

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DELEGATE AUTHORITY TO EXECUTE AN AMENDMENT TO THE
L.A. CARE SERVICE AGREEMENT TO PROVIDE FOR LOCAL
MEDI-CAL MANAGED CARE SUPPLEMENTAL PAYMENTS
(ALL SUPERVISORIAL DISTRICTS) (3 VOTES)**

SUBJECT

Request approval and delegation of authority to the Los Angeles County Department of Health Services (DHS) to execute an amendment to the existing service agreement with the Local Initiative Health Authority for Los Angeles County (d.b.a. L.A. Care Health Plan) to allow DHS' Community Health Plan (CHP) to receive Local Medi-Cal Managed Care Supplemental Payments (LMSPs).

IT IS RECOMMENDED THAT YOUR BOARD:

1. Delegate authority to the Interim Director of Health Services, or his designee, to prepare and execute, on behalf of the County of Los Angeles, an amendment to the service agreement with the L.A. Care Health Plan (L.A. Care). The amendment will authorize CHP to receive LMSPs of approximately \$149,340,000 from L.A. Care for the federal fiscal periods of October 1, 2006 through September 30, 2007 and October 1, 2007 through September 30, 2008, subject to review and approval by County Counsel and the Chief Executive Office, and written notification to the Board offices when the final agreement is executed.
2. Delegate authority to the Interim Director of Health Services, or his designee, to pay L.A. Care approximately \$1,000,000 for investment income not received due to the delay implementing the agreements necessary to make the LMSPs possible.

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PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

In order to maximize available revenue sources, DHS proposed a supplemental increase in the managed care rates it receives from L.A. Care by making intergovernmental transfers (IGT), which your Board approved on August 19, 2008, to the Medi-Cal program to draw down federal funds. The aggregate Medi-Cal payments which include both the IGT and an equal amount of the federal funds are then transferred to L.A. Care as a supplemental rate increase. This amendment between L.A. Care and the CHP, substantially similar to Exhibit 1, will allow for DHS to receive the supplemental rate increase in the form of LMSPs. L.A. Care will pay CHP all of the increased funding it receives under this arrangement based on the IGT made by the County to the California Department of Health Care Services (DHCS) Medi-Cal program.

The Centers for Medicare and Medicaid Services (CMS) is required to approve all Medi-Cal managed care rate increases and review all relevant documentation. As a result, we are requesting delegated authority now, before the final agreement is executed as it will expedite the ultimate receipt of these funds. Although it is not anticipated, if CMS requires material modifications to any agreements pertaining to this funding, we will return to your Board to request another approval.

The recommended action will also authorize DHS to indemnify L.A. Care for the investment income it has lost as a result of participating in this matter. But for the DHS negotiations with CMS for these supplemental payments to the CHP, L.A. Care would have received an approximately 2.8 percent rate increase effective January 1, 2007 from the Medi-Cal program. However, these funds cannot be paid to L.A. Care until the supplemental rate increases considered by this amendment and the IGT agreement with the DHCS are implemented.

Implementation of Strategic Goals

The recommended actions support Goal 7, Health and Mental Health of the County Strategic Plan, by utilizing scarce resources to draw down additional federal funding for our managed care patients.

FISCAL IMPACT/FINANCING

CHP will receive LMSPs from L.A. Care of approximately \$74,670,000 per each federal fiscal period (October 1, 2006 through September 30, 2007 and October 1, 2007 through September 30, 2008); for an aggregate sum of \$149,340,000. The LMSPs are in addition to the regular capitation payments currently received under the agreement with L.A. Care.

Additionally, DHS will pay L.A. Care, approximately \$1,000,000, for lost investment income.

Funding is included in the Fiscal Year 2008-09 Final Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On August 19, 2008, your Board authorized DHS to execute an agreement with the DHCS to make IGT of up to \$85,000,000 to fund the LMSPs. On September 22, 2008, that agreement (#06-55844) was fully executed between DHS and DHCS and included maximum total transfers of \$74,670,000.

The agreement between DHS and DHCS expires on December 31, 2008 and DHCS requires final approval from CMS before it can begin using this money for Medi-Cal managed care payments.

The County does not receive Medi-Cal managed care payments directly from the State; rather, DHCS contracts with L.A. Care, which then subcontracts for services with various provider networks, including CHP. The recommended amendment obligates L.A. Care to remit the full amount of the supplemental rate increases it receives from DHCS by means of LMSPs to CHP for services provided during the period covered by the amendment.

CONTRACTING PROCESS

Advertising on the County's Online Website is not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on current services as a result of this authorization. However, approval of this action will allow DHS to maximize available revenue sources and meet revenue projections included in the DHS Fiscal Outlook.

Respectfully submitted,



John F. Schunhoff, Ph.D.
Interim Director

JFS:LWN:hr

Attachment

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

**Amendment No. ____
Services Agreement
between
Local Initiative Health Authority
for Los Angeles County
and
Community Health Plan**

This Amendment is by and between the Local Initiative Health Authority for Los Angeles County, a local government agency (“Local Initiative”) and the County of Los Angeles (“County”), on behalf of the Community Health Plan, a California health care services plan (“Plan”).

Recitals

WHEREAS, the State of California (“State”) has, through statute, regulation, and policies, adopted a plan (“State Plan”) for certain categories of Medi-Cal recipients to be enrolled in managed care plans for the provision of specified Medi-Cal benefits. Pursuant to this State Plan, the State has contracted with two health care service plans in Los Angeles County. One of these two health care service plans is a health care service plan locally created and designated by the Los Angeles County Board of Supervisors for, among other purposes, the preservation of safety net providers in the Medi-Cal managed care environment. The other health care service plan is an existing HMO which is selected by the State;

WHEREAS, Local Initiative has been designated as Los Angeles County’s locally created health care service plan by the Los Angeles County Board of Supervisors. It is a public entity, created pursuant to Welfare and Institutions Code Sections 14087.38(b) and 14087.9605 and Los Angeles County resolution and ordinance;

WHEREAS, Local Initiative is licensed by the Department of Managed Health Care as a health care service plan under the California Knox-Keene Act (Health and Safety Code Sections 1340 *et seq.*) (the “Knox-Keene Act”);

WHEREAS, Plan is duly licensed as a prepaid full service health care service plan under the Knox-Keene Act;

WHEREAS, Local Initiative and Plan have entered into a prior agreement dated January 1, 2008, as amended (“Agreement”), for Plan to provide and arrange for the provision of healthcare services for Local Initiative enrollees as part of a coordinated, culturally and linguistically sensitive health care delivery program in accordance with the requirements of the Medi-Cal Agreement and all applicable federal and state laws; and

WHEREAS, Local Initiative and Plan desire to amend the Agreement to provide for supplemental payments to Plan as a result of intergovernmental transfers from County to the California Department of Health Care Services (“State DHCS”) to maintain the availability of safety net health care services.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, the parties agree to amend the Agreement as follows:

Exhibit 6 (Compensation) of the Agreement shall be REVISED to add the following:

ADDENDUM TO

EXHIBIT 6

MANAGED CARE SUPPLEMENTAL PAYMENTS

1. **Supplemental Payments to Plan**

A. **Payments**

Should Local Initiative receive any Medi-Cal managed care capitation rate increase from State DHCS which follows from and was determined based on the amount of any intergovernmental transfers provided for in the Intergovernmental Agreement Regarding Transfer of Public Funds (“Intergovernmental Agreement”) effective beginning October 1, 2006 (i.e., Special Medi-Cal Managed Care Rate Increase) (“SMCRI”) and applicable to Local Initiative’s fiscal years ending September 30, 2007 and September 30, 2008, except as provided in Paragraph B below, Local Initiative shall pay to Plan the full amount of the SMCRI received from State DHCS, in accordance with Paragraph D below (i.e., Local Medi-Cal Managed Care Supplemental Payment) (“LMSP”). Except as may be otherwise provided by this Addendum, LMSPs paid to Plan shall not replace or supplant any other amounts paid or payable to Plan by Local Initiative.

Except as otherwise provided in this Addendum, the dispute resolution provisions in Section 10.07 of this Agreement shall apply to any disputes or disagreements between Local Initiative and Plan with respect to the SMCRI or LMSPs.

B. **Quality Improvement Fees**

Local Initiative shall be responsible for any quality improvement fees due pursuant to Welfare and Institutions Code Section 14464.5 relating to any SMCRI. Any capitation rate increases received by Local Initiative resulting from the application or involvement of such quality improvement fees to any SMCRI shall be excluded from any LMSP.

C. **Schedule and Notice of Transfer of County Funds**

(1) The Los Angeles County Department of Health Services (“County DHS”) or Plan shall provide Local Initiative with a copy of the schedule regarding the transfer of County funds to State DHCS, referred to in the Intergovernmental Agreement, no less than thirty (30) calendar days prior to each potential transfer of County funds to State DHCS. Additionally, County DHS or Plan shall provide Local Initiative with a written communication no less than seven (7) calendar days prior to any changes to an existing schedule including, but not limited to, changes in the amounts specified therein.

(2) County DHS or Plan shall provide Local Initiative with written notice at least five (5) calendar days prior to transferring County funds to State DHCS for use as the nonfederal share of any SMCRI.

D. Form and Timing of Payments

Local Initiative agrees to pay LMSPs to Plan in the following form and according to the following schedule:

(1) Local Initiative agrees to pay to Plan LMSPs using the same mechanism through which compensation and Capitation Payments are normally paid to Plan (e.g., electronic transfer); and

(2) Local Initiative will pay to Plan the LMSPs no later than thirty (30) calendar days after receipt of the SMCRI from State DHCS.

E. Consideration

(1) As consideration for the LMSPs, Plan shall use the LMSPs for the following purposes and shall treat the LMSPs in the following manner:

(a) The LMSPs shall represent compensation for services rendered to Plan Members by County owned and operated health care providers during the State fiscal year to which the LMSP applies; and

(b) To the extent that total payments received by a County owned and operated health care provider in any State fiscal year under this Agreement exceed the cost of services provided to Plan Members by that provider during that fiscal year, any remaining LMSP amounts shall be retained by the County owned and operated health care provider to be expended by the provider for health care services. Retained LMSP amounts may be used by the County owned and operated health care provider in either the State fiscal year received or subsequent State fiscal years.

(2) For purposes of subparagraph (1) (b) above, if the LMSPs are not used by the County owned and operated health care providers in the State fiscal year received, retention of funds by the providers will be established by demonstrating that the retained earnings account of the provider at the end of any State fiscal year in which it received payments based on LMSPs funded pursuant to the Intergovernmental Agreement has increased over the unspent portion of the prior State fiscal year's balance by the amount of LMSPs received, but not used. These retained provider funds may be commingled with other County funds for cash management purposes.

F. Local Initiative Oversight Responsibilities

Local Initiative's oversight responsibilities regarding Plan's use of the LMSPs shall be limited as described in this Paragraph F. Local Initiative shall request, within 30 calendar days after each

State fiscal year in which LMSPs were transferred to Plan, a written confirmation from County that states whether and how County DHS and its County owned and operated health care providers complied with the provisions set forth in Paragraph E above. In each instance, County DHS shall provide Local Initiative with the written confirmation required above within 30 calendar days of Local Initiative's request.

G. Cooperation among Parties

Should disputes or disagreements arise regarding the ultimate computation or appropriateness of any aspect of the LMSPs, Plan and Local Initiative agree to work together in all respects to support and preserve the LMSPs to the full extent possible on behalf of the safety net in Los Angeles County.

H. Reconciliation

Within one hundred and twenty (120) calendar days after the end of each of Local Initiative's fiscal years in which LMSPs were paid to Plan, Local Initiative shall perform a reconciliation of the LMSPs transmitted to Plan during the preceding year to ensure that the supporting amount of SMCRIs were received by Local Initiative from State DHCS. Plan agrees to return to Local Initiative any overpayment of LMSPs paid to Plan within thirty (30) calendar days after receipt from Local Initiative of a written notice of the overpayment, unless Plan submits a written objection to Local Initiative. Any such objection shall be resolved in accordance with the dispute resolution processes set forth in Section 10.07 of this Agreement. The reconciliation processes established under this Paragraph H are distinct from the indemnification provisions set forth in Paragraph I below. Local Initiative agrees to transmit to Plan any underpayment of LMSPs within thirty (30) calendar days of Local Initiative's identification of such underpayment.

I. Indemnification

Anything to the contrary contained in Sections 6.05, 8.02, 10.07 and 10.14 of this Agreement notwithstanding, County DHS shall indemnify and hold Local Initiative harmless against any losses, claims, demands, liabilities, court costs, judgments and expenses, imposed by a court or otherwise incurred by Local Initiative as a result of Local Initiative's receipt of SMCRIs or payment of LMSPs, including but not limited to the following circumstances:

(1) In the event that State DHCS, the Department of Health and Human Services or any other federal or state agency recoups, offsets, or otherwise withholds any monies from or fails to provide any monies to Local Initiative, or Local Initiative is denied any monies to which it otherwise would have been entitled, for any reason relating to the Medi-Cal managed care capitation rate increases arising from the Intergovernmental Agreement as such increases flow through the Medi-Cal Agreement between Local Initiative and the State and this Agreement, including but not limited to (a) State DHCS' failure to treat the SMCRIs or LMSPs as set forth in Section 2.2 of the Intergovernmental Agreement; (b) the failure of the SMCRIs to qualify for federal participation pursuant to 42 C.F.R. part 433, subpart B; or (c) overpayment of SMCRIs to Local Initiative by State DHCS, Local Initiative shall have a right to immediately recoup, offset

or withhold any and all such amounts from payments otherwise due to Plan and/or County DHS. Recovery by Local Initiative pursuant to this section shall include, but not be limited to, reduction in future LMSPs paid to Plan in an amount equal to the amount of SMCRI payments recovered from Local Initiative, or by reduction of any other amounts owed by Local Initiative to Plan or County, including reduction of Capitation Payments owed by Local Initiative to Plan pursuant to this Agreement or a reduction of other payments by Local Initiative to County pursuant to any other agreement then existing between the parties;

(2) Local Initiative shall pursue an appeal, a lawsuit, or any other available legal action to challenge any recoupment by State DHCS, the Department of Health and Human Services, or any other federal or state agency that is not required by law, unless after consultation with County DHS and with good cause, Local Initiative determines that it is not in the best interest of Local Initiative and/or County DHS to do so;

(3) At Local Initiative's discretion, County DHS shall either provide or arrange for legal representation on Local Initiative's behalf or Local Initiative shall arrange for its own representation and be entitled to reasonable attorney's fees and costs from County DHS for such representation, in addition to any and all other relief to which Local Initiative may be entitled, including, but not limited to, the following circumstances:

(a) If any action at law, suit in equity, arbitration, or administrative action is brought against Local Initiative by State DHCS, the Department of Health and Human Services, any other federal or state agency or other individual or organization to: (i) enforce or interpret the SMCRIs or LMSPs; or (ii) recoup, offset, or otherwise withhold any monies from Local Initiative relating to the SMCRIs or LMSPs; or

(b) If Local Initiative brings any appeal, action at law, suit in equity, arbitration or administrative action against the State DHCS, the Department of Health and Human Services or any other federal or state agency to (i) enforce or interpret the SMCRIs or LMSPs; or (ii) in response to an action described in subparagraph 1 or subparagraph 3(a) above;

(4) If Local Initiative prevails in any appeal, action at law, suit in equity, arbitration, or administrative action against Plan and/or County DHS to enforce or interpret the SMCRIs or LMSPs or to recoup, offset, or otherwise withhold any monies relating to the SMCRIs or LMSPs, Local Initiative shall be entitled to reasonable attorney's fees and costs from Plan and/or County DHS; and

(5) County recognizes that Local Initiative is entitled to an approximately 2.8% Medi-Cal capitation rate increase (effective January 1, 2007) which is distinct from the SMCRIs, for a portion of the period covered by this Addendum, the receipt of which has been delayed as a result of the implementation of intergovernmental transfers provided for in the Intergovernmental Agreement. Accordingly, in addition to any other obligation of County to indemnify Local Initiative under this Paragraph I, County shall indemnify Local Initiative for all investment income Local Initiative would have earned had it timely received this rate increase. County agrees that no portion of the LMSPs or other Medi-Cal funds shall be used to meet the indemnification obligation established in this subparagraph and the parties agree that credits

related to a non-Medi-Cal service arrangement will be used to satisfy a portion of the liability established in this subparagraph (5). The parties agree to work together in good faith to determine the amount of such investment income and the credit. Further, County's indemnification obligation shall exist irrespective of whether Local Initiative receives any SMCRI or pays any LMSP.

2. Term

This Addendum shall be deemed effective as of October 1, 2006 and shall apply only to Local Initiative's fiscal years ending September 30, 2007 and September 30, 2008. This Addendum shall terminate on March 31, 2009, except that Paragraphs F, G, H and I of Section 1 and this Section 2 shall survive the termination of this Addendum and/or this Agreement.

3. Payment in Full

The LMSPs, in addition to the Capitation Payments, are payment in full (subject to applicable coordination of benefits amounts) for Plan's responsibility for all Health Care Services provided to Plan Members.

Except as set forth herein, this Addendum shall not modify any terms, conditions, rights or responsibilities contained in this Agreement, all of which shall remain the same and in full force and effect; provided, however, if there is any conflict between the terms of this Addendum and other parts of this Agreement, then the terms of this Addendum shall govern.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date of the last signature below.

COUNTY OF LOS ANGELES

By: _____ Date: _____
Its: _____

LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY
d.b.a. L.A.CARE HEALTH PLAN

By: _____ Date: _____
Its: _____